IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.381/1999

1. Smt. Narmadabai Damodar Diukar
(since deceased)
through her legal representatives:
[1(a) Mrs. Meena Manvendra Diukar,
widow.

2(b) Miss Darshana M. Diukar,
major, both residents of
Feira Baixa, Mapusa, Goa]
Transposed as respondents
8(a) and 8(b).

2. Shri Dattaram Damodar Diukar,
3. Shri Bhagvant Damodar Diukar,
4. Shri Sitaram Damodar Diukar,
5. Shri Teshwant Damodar Diukar,
6. Shri Rajendra Damodar Diukar,
All residents of Borda,
Margao, Goa. ..... Petitioners.

V/s.

1. Shri Chandrakant V. Pilankar,
(dec) through his Legal
Representatives:
(a) Smt. Premavati Chandrakant
Pilankar (wife);
(b) Shri Santosh Chandrakant
Pilankar (son);
(c) Shri Rajesh Chandrakant
Pilankar (son)
All the above residing at House
No.305/B, Lopes Vaddo, Verla,
Canca, P.O. Mapusa, Bardez, Goa.
(d) Smt. Neesha Uday Vaidya
(daughter);
(e) Shri Uday W. Vaidya (son-
in-law) both residing at
S-1, Akshayandurga Co-operative
Housing Society, Near Sateri
Temple, Mapusa, Bardez, Goa.
(f)Smt. Smita Sandesh Gaonkar
(daughter)
(g) Shri Sandesh K. Gaonkar
(son-in-law), both residing at
Devalay, Khandola, P.O.
Marcella, Goa.

2. Smt. Laxmi R. Pilankar,
(since deceased)
through her legal reprsentatives:

2(a) Mrs. Vijaya Shashikant
Narvekar, and her husband,

2(b) Mr. Shashikant Pandurang
Narvekar, major, married,
2(c) Mrs. Vanita Rajendra Bhinge,
and her husband;
2(d) Mr. Rajendra Bhinge, both
residents of Bhatlem, Mala,
Panaji.
2(e) Mrs. Sital S. Pilankar, major,
married,
2(f) Mrs. Uma Vithal Pilankar,
major, married,
2(g) Mrs. Shradha Vishvas Pilankar,
major, married,
2(h) Mrs. Radhika R. Pilankar,
major, married, all
residents of Mapusa, Bardez, Goa.

3. Shri Satyavijay R. Pilankar,
4. Vithal alias Umesh R. Pilankar,
5. Vishwas R. Pilankar,
6. Rajendra R. Pilankar,
7. Uday R. Pilankar,
all residents of Dattawadi,
Mapusa, Bardez, Goa.
8.(a) Mrs. Meena Manvendra Diukar,
widow,
(b) Miss Darshana M. Diukar, major,
both residing at Faira Baixa,
Mapusa, Goa. ..... Respondents.

Mr. M.B. D'Costa, Sr. Advocate with Mr. J.A. Lobo,
Advocate for the petitioners.

Mr. S.S. Kantak, Advocate for the respondents.

CORAM : N.N. MHATRE, J.

DATE OF RESERVING THE JUDGEMNT:
JANUARY 30, 2004.

DATE OF PRONOUNCING THE JUDGMENT:
MARCH 05, 2004

J U D G M E N T :

One Damodar Diukar, the first petitioner (since deceased) and the father of the other petitioners let out a tenement in a building owned by him at Dattawadi, Mapusa, Goa to the first respondent on a monthly rent of Rs.145/-. The petitioners filed an eviction application against the respondent in the year 1986 on the ground that the petitioner No.6 required the suit premises for his personal bona fide use and occupation. The other grounds on which the eviction application was based, were sub-letting, arrears of rent and cessation of occupation of the suit premises for a continuous period of more than 4 months. The written statement was filed by the respondents contending, inter alia, that the petitioners did not need the suit premises as they had various other properties in Mapusa itself, which could be occupied by them. It was also pleaded that the respondents were not in arrears of rent and that the suit premises was let out to both, the first and the second respondents and, therefore, there was no question of respondent No.1 having sublet the suit premises to respondent No.2. Evidence of both the parties was recorded before the Rent Controller. By an order dated 28.2.1995, the Rent Controller rejected the grounds made out by the petitioners with regard to arrears of rent, cessation of

occupation of the suit premises for a period of more than 4 months and sub-letting. However, the Rent Controller allowed the eviction application on the ground that the petitioner No.6 required the suit premises for his bona fide personal use and occupation.

2. Being aggrieved by this Order of the Rent Controller, the respondents preferred an appeal before the Administrative Tribunal. Cross objections were also filed by the petitioners. The Administrative Tribunal allowed the appeal and set aside the order of the Rent Controller. The eviction application was also dismissed. The Tribunal found that the petitioner No.6 along with other petitioners was residing in Margao in a tenanted premises. It held that the question of petitioner No.6 requiring the suit premises would not arise as the suit premises were situate in Mapusa; whereas the petitioner No.6 was employed in Margao. Moreover, according to the Administrative Tribunal, since the petitioner had a vacant house at Mapusa which could be used for their personal occupation, the case made out by the petitioners that they required the suit premises for the personal use and occupation of the petitioner No.6 was not genuine.

3. It has been submitted on behalf of the petitioners that the suit premises were let out only to

Chandrakant Pilankar, i.e. the first respondent herein. This respondent had left the premises after he and his sons had constructed a house in Verla-Canca, near Mapusa. The brother Raghunath Pilankar had been sublet the suit premises by respondent No.1 without any written consent from the petitioners and, therefore, the first respondent had sublet the suit premises. It was further submitted that once respondent No.1 acquired premises of his own, the appellate Court could not have disallowed the application as a case that bonafide requirement had been made out. The learned Counsel for the petitioner also submitted that it was improper for the appellate Court to decide which property owned by the petitioners should be occupied by them. The learned Counsel submitted that all premises owned by the petitioners in Mapusa were tenanted and, therefore, it was not possible for them to occupy those tenanted premises. Furthermore, it was urged that the conclusion of the appellate Court that the suit premises were not required for bonafide requirement of the petitioner No.6, was based on a misreading of the evidence and based on conjunctures and surmises. Learned Counsel relied on the Judgments in the case of Raga Vendra Kumar vs.Firm Prem Machinery and Co., (2000) 1 SCC 679; Sashi Kapila vs. R.P. Ashwin, (2002) 1 SCC 583; Akhileshwar Kumar and ors. vs. Mustaqim and ors., (2003) 1 SCC 462; and Atma S. Berar vs. Mukhtiar

Singh, (2003) 2 SCC 3.

4. The learned Counsel appearing for the respondents, in support of the Order of the appellate Court, submits that the petitioners have failed to make out any case that they required the suit premises bona fide. He submits that a desire to occupy the suit premises is not the same as a requirement. The learned Counsel submits that the pleadings in the eviction application were silent as regards the need of the petitioners. In any event, he submits that one storey of the building in which the suit premises was situate, was vacant and, therefore, the petitioner No.6 could easily occupy those premises rather than insisting upon the premises occupied by the respondents.

5 The petitioner No.6 was employed at Margao and continued to reside in a tenanted premises in his occupation along with all the other petitioners and their respective families. There is evidence on record to demonstrate that two brothers of the petitioners had remained unmarried due to lack of space. Petitioner No.6 although working in Margao at that point of time, was likely to be transferred to Mapusa. It is not open for the appellate Court to decide whether the landlord should occupy a particular tenement owned by him. In the case

Raga Vendra Kumar vs. Firm Prem Machinery & Co. (supra), the Apex Court has held that it is a well settled position of law that the landlord is the best judge of his requirement for residential or business purpose and he has got complete freedom in the matter. In Shashi Kapila vs. R.P. Ashwin (supra), the Apex Court held that the bona fides of the landlord cannot be questioned solely on the ground that sometime in past he had wished to sell the tenanted premises. The eviction sought from the suit premises on the ground that the landlord bona fide required the suit premises for his personal use and occupation, could not be denied merely because at some earlier point of time he had entered into agreement of sale of the suit premises.

6. In the present case also it was for the petitioners to decide as to how they wished to occupy the premises that they own. The evidence on record shows that the four properties owned by the petitioners in Mapusa were tenanted and not vacant for the petitioners to occupy them. No suggestion was made to the witness of the petitioners that one storey of the building in which the suit premises was situate was vacant. A statement to that effect was made by Raghunath Pilankar in his deposition. However, it has not been substantiated. Instead, petitioner No.6 has deposed that a tenement

which the petitioners recovered after Court proceedings recently, was occupied by petitioner No.5. The first respondent was occupying the premises of his own and had not stayed in the suit premises for more than 6 years as he and his family occupy the premises built by them. Raghunath Pilankar, the brother of the first respondent claimed to have been in occupation of the suit premises. However, once the Rent Controller found that the need of the petitioners was genuine and bona fide, there was no need for the appellate Court to interfere with the same. The findings of the Rent Controller are based on the cogent evidence on record which ought not to have been interfered with by the appellate Court. In Akhileshwar Kumar vs. Mustaquim (supra) it has been held by the Supreme Court that once landlord proves his bona fides to objective satisfaction of the Court of facts, the choice of accommodation which would satisfy his requirement should be left to landlord's subjective choice and the Court cannot impose its own choice which in the present case, the appellate Court has done. There is no doubt that in the present case, the landlord's choice is reasonable and not whimsical. In Deena Nath vs. Pooran Lal, AIR 2001 SC 2655, the Apex Court has reiterated its view that there must be a genuine, real honest and sincere need of the landlord.

7. The Administrative Tribunal has completely misread the evidence and failed to appreciate the fact that the petitioner No.6 required the suit premises for his own personal need which was real and genuine.

8. Mr. Kantak for the respondents submits that the desire of the landlord cannot be merely fanciful and the requirement must be bona fide which is intended to avoid the mere whim or desire. He buttresses this submission by the Judgment in the case of Deena Nath vs. Pooran Lal, where the Apex Court has, while considering the provisions of Section 12(1)(f) of M.P. Accommodation Control Act, observed as follows :

> " The 'bona fide requirement' must be in praesenti and must be manifested in actual need which would evidence the Court that it is not a mere fanciful or whimsical desire. The legislative intent is made further clear by making the provision that the landlord has no other reasonably suitable residential accommodation of his own in his occupation in the city or town concerned. This requirement lays stress that the need is pressing and there is no reasonably suitable alternative for the landlord but to get the tenant evicted from the accommodation. Similar statutory provision is made in sub-section (e) of S. 12(1) of the Act in respect of accommodation left for residential purposes. Thus, the legislative mandate being clear and unambiguous, the Court is duty-bound to examine not merely the requirement of the landlord as pleaded in the eviction petition but also whether any other reasonably suitable non-residential accommodation in his

> occupation in the city/town is available. The judgment/order of the Court/authority for eviction of a tenant which does not show that the Court/authority has applied its mind to these statutory requirements cannot be sustained and the superior Court will be justified in upsetting such judgment/order in appeal/second appeal/revision. Bona fide requirement, on a first look, appears to be a question of fact. But in recording a finding on the question the Court has to bear in mind the statutory mandate incorporated in S.12(1)(f), if it is found that the Court has not applied the statutory provisions to the evidence on record in its proper perspective then the finding regarding bona fide requirement would cease to be a mere finding of fact, for such erroneous finding illegally arrived at would vitiate the entire judgment . In such case the High Court cannot be faulted for interfering with the finding in exercise of its second appellate jurisdiction under S. 100 of the Code of Civil Procedure."

9. Coming to the case at hand, I am of the opinion that the Rent Controller had properly appreciated the facts and had considered the fact that the petitioner No.6 required the suit premises for his use, bonafide. The petitioners had originally let out the suit premises to Chandrakant Pilankar and Raghunath Pilankar as found by both the Courts below. Chandrakant Pilankar along with his family has been residing separately for the past six years in his own premises. The petitioners who were a family of more than 12 people are staying in a rented accommodation consisting of one bedroom, a hall and a kitchen and at present paying monthly rent of Rs.225/-. There is evidence on record to indicate that two

brothers, i.e. petitioner No.5 and petitioner No.2 are unmarried due to paucity of space. There is no doubt that the petitioners required the premises for their own use. Chandrakant Pilankar is separately staying in other premises for last six years. Raghunath Pilankar is residing in the suit premises along with his family members consisting of himself and his wife and children. Although Raghunath Pilankar in his evidence has stated that his brothers Eknath, Navnath and Anand are residing with him in the suit premises, there is no mention of the same in the written statement. Raghunath Pilankar has also stated on oath that his sons Vishwas and Rajendra have constructed a house each in Mapusa and have been staying therein continuously. Therefore, the hardship which would be caused to the respondent Raghunath Pilankar is far outweighed by the bona fide requirement of petitioner No. 6 who is residing in the suit premises consisting of one kitchen, a hall and a bedroom. The suit premises in possession of the respondents consists of a kitchen, dining hall, one room for worship, plus one hall and a gallery. Obviously, therefore, the area occupied by the petitioners and their family is much less than that occupied by the respondents. In any event, the application for eviction was filed under Section 23(1)(a) and, therefore, the aspect of hardship which would be caused to the tenant if an order for eviction is passed

is not relevant. The proviso to Section 25 is attracted only if the application is filed under Section 23(3). The Administrative Tribunal has completely erred in appreciating the facts before it while dismissing the eviction application on the ground that the petitioners were not able to prove that they required the suit premises reasonably and bonafidely.

10. Mr. Kantak also relies on the Judgment in the case of Ashok Kumar and ors. vs. Sita Ram, reported in AIR 2001 SC 1692. This Judgment does not preclude the High Court, under Article 227, from interfering with the order passed by the appellate Authority which suffers from a serious illegality or perversity. A case of eviction was made out by the petitioners under Section 23(1)(a) of the Act. The appellate Authority's interference with that order is based on surmises and conjectures and not on the evidence on record; therefore, the order must be set aside.

11. In the result, the petition is allowed. The order of the Administrative Tribunal is set aside and the order of the Rent Controller, Mapusa in Case No.RENT/MAP/67/86 is confirmed. Rule made absolute accordingly, with no order as to costs.

NISHITA MHATRE, J.